

Int. No. 967

By Council Members Gennaro, Brewer, Comrie, Dickens, Fidler, Garodnick, Gioia, James, Koppell, Lappin, Martinez, Mitchell, Palma, Recchia Jr., Reyna, Rivera, Stewart, Weprin, Nelson, Liu, Yassky, Sears, White Jr., Mendez, de Blasio, Mark-Viverito, Katz, Vann, Avella, Vacca, Gerson, Jackson, Gonzalez and Ferreras.

A Local Law to amend the administrative code of the city of New York, in relation to requiring energy audits, retro-commissioning and retrofits of building systems.

Be it enacted by the Council as follows:

Section 1. Chapter 3 of title 28 of the administrative code of the city of New York is amended by adding a new article 308 to read as follows:

ARTICLE 308

AUDITS, RETRO-COMMISSIONING AND RETROFITS OF BUILDING SYSTEMS

§28-308.1 Definitions. As used in this article, the following terms shall have the following meanings:

COVERED BUILDING. A building that exceeds 50,000 gross square feet, as determined by the department of finance, or two or more buildings on the same tax lot that together exceed 50,000 gross square feet.

CENTRAL SYSTEM. Building systems or components thereof, as specified by the department, that are part of the building operation and control by the owner and use energy or impact energy consumption including:

1. The building envelope.

2. Equipment located within or supplying the common, public, service and utility portions of the building.

3. Each building system, including terminal units up to the point at which it connects to equipment installed by any tenant (other than a net lessee for a term of 49 years or more, inclusive of renewal options), condominium unit owner or cooperative unit shareholder.

Such systems shall not include power, lighting, appliances or electronics systems located within spaces occupied by tenants (other than a net lessee for a term of 49 years or more, inclusive of renewal options), condominium unit owners or cooperative unit shareholders.

ENERGY AUDIT. A systematic process of identifying and developing modifications and

improvements to central systems of covered buildings based on the level II audit set forth in the 2004 edition of Procedures for Commercial Building Energy Audits published by the American Society of Heating, Refrigerating and Air-conditioning Engineers Inc.(ASHRAE) as such process may be amended by the rules of the department. An audit shall include:

1. All reasonable retro-commissioning and retrofit measures that would, if implemented, reduce energy use and/or the cost of operating the building.
2. For each measure, the associated annual energy savings, the cost to implement, and the simple payback, calculated by a method determined by the department.
3. The building's benchmarking scores as per the EPA Portfolio Manager tool.
4. An accurate end-use break-down for initial usage and predicted energy savings.
5. An assessment of energy used outside the central system which impacts the energy consumption of the central system, however no retro-commissioning or retrofit measures will be required to be performed on equipment that is not part of the central system.

ENERGY EFFICIENCY REPORT. The report required to be filed pursuant to section 28-308.4 of this article.

ENERGY MODELING. The use of an energy software program, approved by the department, to predict energy consumption..

ENERGY PROFESSIONAL. An approved agency meeting the qualifications established by department rules to perform energy audits.

FINANCIALLY DISTRESSED BUILDING. A covered building that meets one of a list of quantitative thresholds or that participates in a city-managed financial assistance program, as determined in rules to be promulgated by an agency designated by the mayor.

OWNER. The owner of record of a covered building, except that in the case of a net lease of an entire building for a term of 49 years or more, inclusive of renewal options, the term owner shall refer to the net lessee and in the case of a covered building held in cooperative or condominium form of ownership, the term owner shall refer to the board of managers in the case of a condominium and the board of directors in the case of a cooperative apartment corporation.

RETRO-COMMISSIONING MEASURES. Non-capital work such as repairs, maintenance,

adjustments, changes to controls or operational improvements that optimize a building's energy performance, and that have been identified by a systematic process of investigating and analyzing the performance of a building's equipment and systems that impact energy consumption.

RETROFIT MEASURES. Capital alterations of building systems involving the installation of new equipment, insulation or other proven energy efficiency technologies that reduce energy consumption and improve the efficiency of such systems.

SIMPLE PAYBACK. The number of years it takes for the projected annual energy savings to pay back the amount invested in the energy efficiency measure, as determined by dividing the investment by the annual energy savings.

SYSTEM. A building assembly made up of various components that serve a specific function, including but not limited to exterior walls, windows, doors, roofs, ceilings, floors, lighting, piping, ductwork, insulation, HVAC system equipment or components, electrical appliances and plumbing appliances.

§28-308.2 Energy audits required. The owner of a covered building shall ensure that an energy audit is performed on the central systems of such building no earlier than three years prior to the date on which such building's energy efficiency report is filed with the department pursuant to this article. Such energy audit must be performed by or under the supervision of an energy professional in accordance with rules promulgated by the department.

Exceptions. No energy audit, retro-commissioning or retrofit is required if the building complies with one of the following exceptions:

1. The actual performance of the covered building, measured through an analysis of energy bills over a two year period within the three year period prior to the filing of an energy efficiency report, meets or exceeds the performance predicted by an energy model of such building having the same systems as such building and meeting the requirements of the New York city energy conservation code (whether or not the covered building is exempt from such code) in effect within 3 years prior to the due date of the building's energy efficiency report. The comparison of performance shall be determined by the energy cost budget method in accordance with rules promulgated by the department.

2. The covered building has received an EPA Energy Star label for at least two of the three years preceding the filing of the building's energy efficiency report.

3. The covered building has been certified under the Leadership in Energy and Environmental Design (LEED) 2009 rating system for Existing Buildings published by the United States Green Building Council or other LEED rating system for existing buildings, as determined by the department, within two years prior to the filing of the building's energy efficiency report.

§28-308.2.1 Contents of audit report. The energy professional shall prepare and sign a report of the energy audit. The audit report shall include such information relating to the audit as shall be specified in the rules of the department including but not limited to (i) the date or dates that the audit was performed (ii) a list of all reasonable retro-commissioning and retrofit measures available to the owner, (iii) the costs and energy savings associated with each measure (iv) a list of all reasonable retro-commissioning and retrofit measures available to the owner with a simple payback of not more than 7 years, (v) at the option of the owner, a list of retro-commissioning and retrofit measures that when combined equal or exceed the overall reduction in energy consumption of all the retrofit and retro-commissioning measures with a simple payback of not more than 7 years.

§28-308.2.1.1 Compliance with landmarks laws. The cost estimates for retrofit and retro-commissioning measures in covered buildings that are regulated by any city, state or federal law regulating landmarks and historic buildings shall include all additional costs necessary for the proposed work to comply with such law.

§28-308.3 Retro-commissioning and retrofit measures required. The owner of a covered building shall ensure that all the retro-commissioning and retrofit measures identified in the audit report as having a simple payback of not more than 7 years or, at the option of the owner, retro-commissioning and retrofit measures that when combined equal or exceed the overall reduction in energy consumption of the retrofit and retro-commissioning measures with a simple payback of not more than 7 years, are performed on the systems of such building prior to the date on which such building's energy efficiency report is filed with the department pursuant to this article.

Exception. Where the owner determines post audit, in accordance with the rules of the department, that the actual cost of one or more of the retro-commissioning or retrofit measures

may exceed the estimates set forth in the audit by more than 20 percent and that the simple payback for such measure or measures may exceed 7 years, the owner shall not be required to implement such measure or measures. The owner shall substantiate such determination in a manner to be set forth in the rules of the department.

§28-308.4 Energy efficiency report required. The owner of a covered building shall ensure that an energy efficiency report for such building, prepared and signed by an energy professional, is submitted to the department on or within two years prior to the due date established pursuant to this section.

Exceptions. 1. An owner of a covered building may apply for an extension of time to file an energy efficiency report if despite such owners good faith efforts, to be documented in such application, the owner is unable to complete required retro-commissioning and retrofit measures prior to the scheduled due date for such report. The commissioner may grant no more than 2 such extensions of no more than 1 year each. Extensions granted pursuant to this provision shall not extend the scheduled due dates for subsequent energy efficiency reports.

2. An owner of a covered building that qualifies as a financially distressed building may apply for extensions of time of not more than one year in each instance to submit an energy efficiency report to the department.

3. An owner of a covered building may apply for an extension of time to file an energy efficiency report if, despite the owners good faith efforts, to be documented in such application, the owner is unable to secure loans or grants to finance required retro-commissioning and retrofit measures prior to the scheduled due date for such report.

§28-308.4.1 Due dates for covered buildings in existence on the effective date of this article. No later than December 31st, 2010 the department shall by rule assign due dates for the first energy efficiency reports to be submitted for completed buildings in existence on the effective date of this article pursuant to a staggered schedule over a ten year period commencing on December 31st, 2013. No such first report shall be required to be submitted earlier than ten years after the building was completed, as determined by the department. Energy efficiency reports for such buildings shall be due every ten years thereafter on the anniversary of the due date of the first such report.

§28-308.4.2 Due dates for covered buildings completed after the effective date of this article. The

owner of a covered building completed after the effective date of this article shall submit the first energy efficiency report for such building in the 10th year following the issuance of the first certificate of occupancy for such building on a due date to be assigned by the department . Energy efficiency reports for such building shall be due every ten years thereafter on the anniversary of the due date of the first report.

§28-308.5 Content of energy efficiency report. An energy efficiency report shall contain a certification by the energy professional that the covered building is in compliance with the provisions of this article and the rules of the department. Unless one of the exceptions set forth in section 28-308.2 applies to such building, the report shall include (i) the energy audit report (ii) copies of approved construction documents for all required retro-commissioning and retro-fit work, (iii) sign-offs that any required work has been completed, (iv) substantiation of post audit computations of cost and simple payback in a manner to be provided in the rules of the department, and (v) other information relating to energy consumption required by the department. Where an energy audit, retro-commissioning and retrofit are not required pursuant to one of the exceptions set forth in section 28-308.2, such report shall include (i) substantiation that the covered building complies with such exception in a manner to be provided in the rules of the department and (ii) other information relating to energy consumption required by the department.

§28-308.6 Rules. Not later than December 31st 2010 the department shall promulgate rules to carry out the provisions of this article, which may include separate fees for reports and applications filed pursuant to this article.

§28-308.7 Notification by the department of finance. The department of finance shall notify the owner of each covered building of the requirements of this article three years prior to the due date of an energy efficiency report for such building and every year thereafter until the due date.

§2. Notwithstanding any inconsistent provision of article 308 of chapter 3 of title 28 of the administrative code, as added by section 1 of this local law, the owners of covered buildings in existence on the effective date of this local law may comply with the first assigned due date for the submission of an energy efficiency report, by submitting with such report records of audits, retro-commissioning and retrofits performed prior to December 31, 2013 on a voluntary basis and certified as completed prior to

such date, subject to the following conditions:

a. Audits, retro-commissioning and retrofits performed after the enactment of rules by the department of buildings relating thereto shall conform to such rules.

b. Audits, retro-commissioning and retrofits performed and certified as completed prior to the adoption of such rules shall be a Level II Audit as set forth in the 2004 edition of Procedures for Commercial Building Energy Audits published by the American Society of Heating, Refrigerating, and Air-conditioning Engineers (ASHRAE), an audit performed under a NYSERDA or NYPA contract, or other audit as determined by the department. Such energy audit performed prior to the completion of rule-making shall be signed and dated by a Professional Engineer, Certified Energy Manager, or Certified Energy Auditor and shall include certification that all work associated with the audit, including but not limited to surveys, inspections, and analyses, was completed on or after January 1, 2006.

§3. Severability. If any section, subsection, sentence, clause, phrase or other portion of this local law is for any reason declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this local law, which remaining portions shall continue in full force and effect.

§4. This local law shall take effect immediately, provided that no energy efficiency report shall be required to be submitted to the department of buildings before December 31st, 2013.